

ESTTA Tracking number: **ESTTA493436**

Filing date: **09/10/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Maxifrig Refrigerant Supply Co., Inc.
Granted to Date of previous extension	09/09/2012
Address	3421 N. CAUSEWAY BLVD Suite 701 METAIRIE, LA 70002 UNITED STATES
Attorney information	Dennis S. Prah Ladas & Parry LLP 1040 Avenue of the Americas New York, NY 10018-3738 UNITED STATES dprahl@ladas.com, masbell@ladas.com, elipins@ladas.com Phone: 212.708.1817

Applicant Information

Application No	85439486	Publication date	03/13/2012
Opposition Filing Date	09/10/2012	Opposition Period Ends	09/09/2012
Applicant	Concord Chemical 18001 Kellogg Rd. Saucier, MS 39574 UNITED STATES		

Goods/Services Affected by Opposition

Class 001. First Use: 1997/07/00 First Use In Commerce: 1997/07/00
All goods and services in the class are opposed, namely: refrigerant chemical compound which produces cooling in mechanical equipment

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MAXI-FRIG		
Goods/Services	refrigerant chemical compound which produces cooling in mechanical		

	equipment; coolants
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Attachments	Notice of Opposition 09-10-2012 DP.pdf (5 pages)(24725 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/dp/
Name	Dennis S. Prah
Date	09/10/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 85/439,486
For the mark MAXI-FRIG
Published in the Official Gazette on March 13, 2012

_____	X	
	:	
Maxifrig Refrigerant Supply Co., Inc.,	:	
	:	
Opposer,	:	Opposition No. _____
	:	
v.	:	
	:	
Concord Chemical,	:	
	:	
Applicant.	:	
_____	X	

NOTICE OF OPPOSITION

In the matter of Application Serial No. 85/439,486, filed on October 5, 2011 by Concord Chemical, a Louisiana corporation with an address at 18001 Kellogg Rd., Saucier, MISSISSIPPI 39574, in International Class 1 seeking registration on the Principal Register of the trademark MAXI-FRIG in connection with "refrigerant chemical compound which produces cooling in mechanical equipment," which application was published for opposition on March 13, 2012, with extensions of time to oppose granted until September 9, 2012;

Opposer, Maxifrig Refrigerant Supply Co., Inc., a Louisiana corporation with an office at 3421 N. Causeway Blvd., Suite 701, Metairie, LOUISIANA 70002, believes that it is or will be damaged by registration of Application No. 85/439,486 and hereby opposes registration of said application with respect to all goods in Class 1 (hereinafter, the "Goods") on the following grounds:

1. Opposer's predecessor-in-interest, Mr. David L. Meyer, p/k/a as David M. Goldberg, was the exclusive owner of common law rights in the MAXI-FRIG trademark for the Goods and of the good will associated with such mark (the "MAXI-FRIG Mark") since at least as early as Applicant's claimed date of first use and long prior to the filing of the subject application.

2. Mr. Meyer extensively advertised, promoted and marketed the Goods under the MAXI-FRIG mark, including through the website at <http://www.maxifrig.com>, such that consumers came to know and recognize the MAXI-FRIG Mark as identifying goods which originated with or were authorized by Mr. Meyer.
3. Mr. Meyer sought, on a *pro se* basis, to register the MAXI-FRIG mark for the Goods in United States application serial number 78/575,182 filed on February 25, 2005 based on intent to use, but allowed said application to become abandoned when he accidentally failed to submit a Statement of Use with 6 months of Notice of Allowance, which issued on June 6, 2006, despite his actual use of the mark.
4. Applicant and its principal Louie Normand used the MAXI-FRIG mark with the authorization of Mr. Meyer until Mr. Meyer was murdered in August 2011.
5. All good will accrued by Applicant through its use of the mark with the authorization of Mr. Meyer inured solely to the benefit of Mr. Meyer.
6. Opposer was the successor to Mr. Meyer's business, including the corresponding good will and accompanying rights in the trademark and the domain name registration, after Opposer's principal, Ms. Jane Goldberg acquired those rights under the Louisiana laws of intestate succession.
7. Opposer continued extensive advertisement, promotion and marketing of the Goods under the MAXI-FRIG mark, including through the website at <http://www.maxifrig.com>.
8. Opposer's continued advertisement, promotion and marketing of the Goods under the MAXI-FRIG mark resulted in consumers continuing to know and recognize the MAXI-FRIG Mark as identifying goods which originated with or are authorized by the same source.
9. In view of the existing relationship between Opposer's predecessor-in-interest and Applicant, Opposer allowed Applicant to continue use of the MAXI-FRIG mark, and approached Applicant to memorialize the terms of such authorization.
10. Applicant, fully aware of Opposer's rights, refused to pursue a written agreement, and instead filed the subject application in its own name.

11. In filing the subject application, Applicant knowingly made false, material representations by alleging that Applicant believes that it is the owner of the mark and that no one else, to the best of Applicant's knowledge and belief, has the right to use the mark in commerce.
12. As these false representations were made with the intent to deceive the USPTO, Applicant committed fraud upon the Trademark Office under *Torres v. Cantine Torresella S.r.l.* 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986).
13. Applicant's attempt to register and continue using the identical MAXI-FRIG Mark for the identical Goods causes a likelihood of confusion with Opposer's superior rights arising from earlier common law use of the MAXI-FRIG Mark for the Goods in violation of Section 2(d) of the Lanham Act.


WHEREFORE, Opposer requests that the opposition be sustained and Application No. 85/439,486 be refused registration in its entirety.

Please charge the required fee and any additional costs to our Deposit Account No. 120525.

Respectfully submitted,

LADAS & PARRY LLP
Attorneys for Opposer

Dated: September 10, 2012

By: 
Dennis S. Prah
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New York, NY 10018
(212) 708-1817
Our Ref: C11638925

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper, fee or correspondence is being filed electronically on September 10, 2012 through the U.S. Patent and Trademark Office web site.

A handwritten signature in blue ink, appearing to be 'D. Prah', is positioned above a horizontal line.

Dennis S. Prah

CERTIFICATE OF SERVICE

The undersigned, one of Opposer's attorneys, hereby certifies that on September 10, 2012 she caused a true and correct copy of the foregoing NOTICE OF OPPOSITION to be served upon Applicant by First Class mail, postage pre-paid, at the following address:

Matthew H. Swyers
The Trademark Company, PLLC
344 Maple Avenue West, Suite 151
Vienna, VA 22180 USA

A handwritten signature in blue ink, appearing to be 'D. Prah', is written over a light blue rectangular background.

Dennis S. Prah